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April 5, 2021

Epic Games, Inc. v. Apple Inc., Case No. 4:20-cv-05640-YGR-TSH
In re Apple iPhone Antitrust Litigation, Case No. 4:11-cv-06714-YGR-TSH
Cameron v. Apple Inc., Case No. 4:19-cv-03074-YGR-TSH

Dear Magistrate Judge Hixson:

Epic Games, Inc. (“Epic”) respectfully submits this letter in response to the joint letter filed by Apple Inc. (“Apple”) and Facebook Inc. (“Facebook”) earlier today. (Dkt. No. 395.) Epic does not take a position on the substance of the discovery dispute addressed in the letter. Epic does, however, wish to correct the factual record in a limited respect.

In its portion of the letter, Apple asserts that “Epic did not . . . list in its Rule 26(a) disclosures any Facebook employee.” (*Id.* at 3.) That is an incomplete statement of the record, as Epic disclosed Facebook and its employees in its amended Rule 26(a)(1) initial disclosures on January 13, 2021, more than one month before the close of fact discovery. In its amended initial disclosures, Epic identified “Facebook, Inc. . . . and the employees of the foregoing”, as well as other third parties, on a company-wide basis. Apple did not object to that approach. To the contrary, when Apple amended its initial disclosures a few weeks later on February 10, 2021, it, too, identified third parties at a company level. Accordingly, any suggestion that Epic’s witness disclosures were somehow deficient or untimely as to disclosure of third parties, including Facebook, would be inaccurate.

It also bears noting that Epic and Apple specifically agreed that if any un-deposed witnesses from a third party (such as Facebook) were identified as trial witnesses, such witnesses would be deposed after the discovery deadline and before trial. The agreement did not extend to document discovery after the fact discovery cutoff.

Respectfully submitted,

/s/ J. Wes Earnhardt
J. Wes Earnhardt

The Honorable Magistrate Judge Hixson
San Francisco Courthouse
Courtroom G, 15th Floor
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